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**Before the Committee on Housing & Neighborhood Revitalization
Council of the District of Columbia**

**Performance Oversight Hearing Regarding
the Department of Housing & Community Development**

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The Legal Aid Society of the District of Columbia¹ submits the following testimony regarding the impact of the Department of Housing & Community Development (DHCD) on low-income tenants in the District of Columbia and the agency’s performance.

Legal Aid represents hundreds of low-income tenants in housing cases each year. In addition to representing individual tenants in eviction and housing conditions cases, we also represent groups of tenants or tenant associations to challenge building-wide rent increases under the Rent Stabilization Program and to exercise their rights under the Tenant Opportunity to Purchase Act (TOPA). Through our building work, we often interact with various divisions of DHCD.

We have three targeted concerns about the performance of DHCD as it relates to our work representing low-income tenants. First, the Rental Conversion and Sale Division (CASD) should return to its prior system of coordinating closely with community-based organizations that DHCD funds to ensure that they can provide outreach, education, and technical assistance to tenants in the TOPA process before other third parties intervene. Second, the Rental Accommodations Division (RAD) should ensure that tenants are able to get easy access to underlying documentation filed with hardship petitions, which is kept at RAD for tenant review and is critical to evaluating a proposed hardship rent increase. Third, RAD should ensure that it

¹ The Legal Aid Society of the District of Columbia was formed in 1932 to “provide legal aid and counsel to indigent persons in civil law matters and to encourage measures by which the law may better protect and serve their needs.” Legal Aid is the oldest and largest general civil legal services program in the District of Columbia. Over the last 88 years, Legal Aid staff and volunteers have been making justice real – in individual and systemic ways – for tens of thousands of persons living in poverty in the District. The largest part of our work is comprised of individual representation in housing, domestic violence/family, public benefits, and consumer law. We also work on immigration law matters and help individuals with the collateral consequences of their involvement with the criminal justice system. From the experiences of our clients, we identify opportunities for court and law reform, public policy advocacy, and systemic litigation. More information about Legal Aid can be obtained from our website, www.LegalAidDC.org, and our blog, www.MakingJusticeReal.org.

updates its forms and procedures in a timely manner to reflect changes in the law, including important tenant protections enacted by the Council in the past few years.

The Rental Conversion and Sale Division Should Share Information About TOPA Filings With Its Community-Based Organization Partners

This past year, Legal Aid has worked closely with community-based organizations and tenants in small buildings (ranging from four to fourteen units) that were offered for sale subject to the TOPA process. Legal Aid has found this to be a lengthy, challenging, though ultimately highly rewarding process for the tenants in these buildings. Tenants we have worked with are empowered when they can make informed decisions about the future of their community. Each property is unique, just as each group of tenants is unique, and the course that any tenant or group of tenants takes is always shaped by their particular circumstances. Yet, in every project Legal Aid has worked on, tenants were able to secure the long-term affordability of their units along with needed repairs and upgrades to their building through the TOPA negotiation process. The value that this represents for these tenants—the ability to remain in one’s home, the guarantee of long-term affordability, and the prospect of better living facilities—is hard to quantify.

Navigating the complexities of TOPA is difficult for organizations who have experience and expertise in the subject, to say nothing of tenants who have never heard of TOPA before. Unfortunately, as DHCD has previously acknowledged in its written responses to this Committee:

The general public, tenants and housing providers do not have significant awareness of their rights or obligations under [TOPA] and [this] can present challenges and prevent tenants from exercising these rights. ... Often despite their best efforts our CBO partners are unable to reach tenants before they make decisions regarding their rights such as assigning their right to purchase for consideration other than a guarantee of affordable housing.²

In contrast, for-profit developers are intimately familiar with TOPA and well-positioned to vault over the TOPA “hurdle” before tenants even receive notice of an offer of sale. Because of the asymmetry of information about TOPA and about a prospective sale, private realtors and attorneys have been able to beat community-based organizations to the punch and offer tenants paltry compensation in exchange for a waiver or assignment of their TOPA rights. Under the status quo, tenants are signing away rights that they do not fully understand, with no clue as to the universe of other options they are forgoing.

Although DHCD receives questions from this Committee every year about efforts by housing providers to circumvent TOPA, DHCD maintains that it has no role in overseeing this process or taking enforcement action. Community-based organizations, which are on the front lines of TOPA implementation, only hear about these stories after it is too late. The power imbalance

² Department of Housing and Community Development FY18-FY19 YTD Performance Oversight Pre-Hearing Responses, response to Question 13.

and opportunity for abuse created by a lack of proactive, tenant-facing information fundamentally undermines the premise of TOPA as a structured negotiation process and undercuts DHCD’s own mandate to effectively implement TOPA.

To correct this imbalance, CASD should return to its practice of sharing TOPA filings with community-based organizations before that information becomes public. In the past, this allowed these organizations to contact tenants and provide them with complete information and technical assistance before tenants could be swayed with one-sided offers. DHCD processed 1,620 TOPA notices in fiscal year 2018.³ Returning to the earlier information-sharing process will give thousands of tenants an actual shot at negotiating for—and hopefully securing—quality, long-term, affordable housing.

We urge the Committee to inquire about CASD’s efforts to provide notice of TOPA filings to community-based organizations. If CASD declines to accept this recommendation, the Committee should consider a legislative amendment to TOPA to address the underlying issue—whether it be requiring CASD to provide this information, or implementing a statutory “cooling off” period during which developers may not approach tenants with offers to waive or assign their rights.

The Rental Accommodations Division Should Ensure That Tenants Have Access to the Documents Underlying Hardship Petitions

When filing a hardship petition, a landlord is required to submit detailed documentation of its claimed income and expenses that justify the requested rent increase.⁴ While tenants receive notice and a copy of a hardship petition, the underlying documentation is filed with RAD but not provided to the tenants directly. This makes practical sense, because the underlying documentation may amount to hundreds or even thousands of pages. Instead, the notice RAD sends to tenants informs them of “the right of each tenant and the designated tenant representative to review or obtain a copy of the hardship petition including all supporting documentation at the office of the Rent Administrator.”⁵

Once a hardship petition has been reviewed by the government, tenants have 30 days to file objections and exceptions to challenge the petition and request a hearing.⁶ Tenants may argue, for example, that the landlord has claimed expenses outside the one-year period, under-reported income for the building, or improperly reported capital expenses without depreciating them.⁷ In

³ Department of Housing and Community Development FY18-FY19 YTD Performance Oversight Pre-Hearing Responses, 2018 Workload Measures.

⁴ 14 DCMR § 4209.17 (requiring a housing provider to provide “underlying documents to substantiate the income and operating expense schedule of the housing accommodation”, including copies of bills, checks and bank statements, and ledgers, journals, and similar records).

⁵ 14 DCMR § 4209.20(c).

⁶ *Id.* § 4209.20(f).

⁷ *Id.* § 4209.11 (listing the issues to be considered when adjudicating a hardship petition, including, *inter alia*, whether the claimed expenses are accurate, verified, and reflect a 12-month period and whether capital expenses have been depreciated).

order to formulate these objections and submit them on time, tenants must have access to the documents filed by the landlord.

Historically, Legal Aid and other legal services providers had been able to work successfully with RAD to obtain copies of the underlying documentation for hardship petitions where we are advising the tenants and considering representation. Typically, a simple request, sometimes accompanied by a release from one of the tenants, was deemed sufficient for RAD to allow us to review the documents. We find this review of the underlying documentation to be invaluable in understanding the landlord's claims and properly advising tenants about the possible bases to challenge the requested rent increase.

In more recent years, RAD has requested that we submit a FOIA request in order to get access to the documents, even if we are acting on behalf of the tenants at the property. RAD also has informed us that a tenant at the property acting directly would need to go through the same process. A formal FOIA request is, in fact, not required and raises two problems. First, this process creates an unnecessary burden for unrepresented tenants in particular to obtain access that they are guaranteed by law. Second, we have found that RAD often redacts large chunks of the document production, making it impossible for tenants or their representatives to understand the landlord's claims. In a case that Legal Aid currently is reviewing, RAD actually redacted pages of the hardship petition itself, such that we cannot even see the basic calculations completed by the landlord to arrive at the requested rent increase.

RAD should revise this process to ensure that tenants and their representatives are able to obtain easy access to all documents filed by the landlord with a hardship petition, without any redactions. On this issue, we urge the Committee to inquire about the current process, recommend appropriate changes, and monitor implementation.

The Rental Accommodations Division Needs to Update Its Notices and Procedures to Reflect Current Law, Including Tenant Protections Enacted By The Council

Finally, Legal Aid is concerned that RAD is not acting promptly to update its notices and procedures to reflect changes in the rent stabilization law that protect tenants from large rent increases—and ultimately protect these tenants from displacement. This includes newer tenant protections in the Rent Control Hardship Petition Limitation Amendment Act of 2016,⁸ which limits certain rent increases taken under hardship petitions, and the Elderly Tenant and Tenant with a Disability Protection Amendment Act of 2016,⁹ which exempts low-income elderly and tenants with disabilities from extraordinary rent increases. Unfortunately, RAD has not taken the necessary steps to ensure that tenants can take full advantage of these new laws.

The Rent Control Hardship Petition Limitation Amendment Act of 2016, which has been in effect since February 2017, limits conditional rent increases that landlords can take while hardship petitions are under review. Under prior law, if a landlord filed a hardship petition and the Rent Administrator had not issued a decision within 90 days, the landlord was allowed to take the proposed rent increase “conditionally”, i.e. on a temporary basis until the Rent

⁸ D.C. Law 21-0197, codified at D.C. Code § 42-3502.12(c)(2).

⁹ D.C. Law 21-0239, codified at D.C. Code 42-3502.24.

Administrator made a final decision. The new law caps conditional rent increases at 5 percent and only allows this type of increase if the landlord has negative net income.¹⁰ This change protects tenants from large rent increases and requires landlords to prove they are entitled to these increases before they take them.

Legal Aid has submitted ongoing FOIA requests and reviewed hardship petitions filed since 2006, including those filed since February 2017 when the new law went into effect. We have found that RAD is continuing to issue notices that incorrectly inform tenants facing hardship petitions that their landlord can take the full proposed rent increase on a conditional basis. In other cases, RAD is informing tenants the landlord can take a 5 percent rent increase, even though the landlord is not entitled to any increase under the law. *In every single case where Legal Aid has been able to review the full hardship petition and the initial notice issued by RAD, the notice is wrong and contains legally-incorrect information.*¹¹ This misinformation has the potential to confuse tenants and discourage them from challenging hardship petitions, based on an inaccurate fear that they face an imminent rent increase and potential displacement. The Council changed the law to prevent exactly this problem, and it is imperative that RAD take immediate steps to ensure its notices correctly state the law.

The Elderly Tenant and Tenant with a Disability Protection Amendment Act of 2016 went into effect more recently, on October 1, 2018. This law exempts low-income elderly and tenants with disabilities from paying rent increases approved under hardship petitions, substantial rehabilitation petitions, and voluntary agreements. These types of rent increases often are quite large and can force low-income tenants to leave their homes. Exempt tenants can avoid these increases but first must submit applications showing they qualify to RAD.

Legal Aid and other legal services organizations are actively working with tenants who are facing large rent increases and are protected by the new law. RAD acted relatively promptly to implement this law and currently has a working draft of a new form for low-income elderly and tenants with disabilities to file in order to claim their protections. We appreciate RAD's efforts to date to work with tenants and their advocates on this project, but there is still work to be done. We urge RAD to take immediate steps to finalize and implement this form, to ensure that protected tenants can have certainty that they will be exempt.

¹⁰ D.C. Code § 42-3502.12(c)(2).

¹¹ A sample notice from petition number 20,911 is attached, along with the petition itself. In this case, filed January 7, 2019, the initial notice states the landlord can take up to the full proposed 56.5 percent increase; the landlord has positive net income and is not entitled to any conditional increase. In petition number 20,912, filed October 31, 2019, the initial notice incorrectly states the landlord can take all or part of the full proposed 42.86 percent increase; at most, the landlord would be entitled to a 5 percent conditional increase. In case numbers 20,906 (filed April 18, 2018) and 20,907 (filed May 10, 2018), the initial notices incorrectly indicate the landlord can take a 5 percent increase; the landlord is not entitled to any conditional increase in these cases. In case numbers 20,904 (filed March 3, 2017) and 20,905 (filed August 4, 2017), the initial notices incorrectly state the landlord can take up to the full 59.46 percent and 15 percent increases respectively; the landlord is only entitled to a 5 percent conditional increase in these cases.

On this issue, we urge the Committee to inquire about the current status of revising RAD forms to conform to current law and to monitor implementation to ensure these recommended steps are taken.

Conclusion

Thank you for this opportunity to testify about the performance of DHCD. We look forward to continuing to work with the Committee to monitor the Department's progress in coordinating with community-based organizations to further the goals of TOPA, particularly with regard to preserving affordable housing; and RAD's progress in ensuring that tenants have access to the underlying documentation for hardship petitions and that more recently-enacted tenant protections are incorporated into RAD's notices and procedures.